



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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December 2003

Dear Reader,

Attached are updates to the 1998 State Environmental Policy Act (SEPA) Handbook that include:

- A new section on agency actions;
- Revision of the categorical exemptions section (reflecting amendments to the SEPA Rules in August 2003).
- A new section on creating categorical exemptions for residential and mixed use infill;
- A summary of significant SEPA appellate court decisions from 1999 through May 2002; and
- Corrections and updates, including corrected contact information (addresses, phone numbers, and Internet addresses).

The minor corrections are identified in Table 1 on the next page. Please make these changes on the specified pages in your copy of the SEPA Handbook. Pages with more extensive corrections and additions have been rewritten and are attached. Please insert the revised pages into your Handbook using the guide in Table 2.

The 2003 updates or the updated SEPA Handbook can be printed or downloaded from the SEPA website at <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>. This website includes other information about SEPA that you may find useful.

We welcome your comments and/or suggestions for future Handbook updates. Comments can be sent to the SEPA Unit, Department of Ecology, PO Box 47703, Olympia, WA 98504-7703 or emailed to sepaunit@ecy.wa.gov.

If you have any questions, please contact the SEPA Unit at the address above, or call me at (360) 407-6922.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Ritchie".

Barbara Ritchie
SEPA Unit

Table 1
Corrections to the 1998 SEPA Handbook
December 2003

The following table identifies corrections needed to update the 1998 State Environmental Policy Act (SEPA) Handbook. Please make these corrections in your copy of the Handbook.

Page – Location	Current Information	Correction
Pg vii, Acronyms, fourth line	ESHB 1724	Add: (Enacted in 1995)
Pg 10, Section 2.3. Determine Whether SEPA is Required, first paragraph	SEPA environmental review is required for all agency actions unless specifically exempted by the SEPA Rules (WAC 197-11-800 to 880) or statute (RCW 43.21C.035, .037, .0384).	Delete: (RCW 43.21C.035, 057, 0384). Add: (Refer to Section 2.3.3. Categorical Exemptions)
Pg 15	2.3.3.4. Tips	Change the section number to 2.3.3.5 (a new section 2.3.3.4 is included in the updated pages)
Pg 15, Section 2.3.3.4. Tips, first bullet	RCW 75.20.350	Change to: RCW 77.55.290 (statute was recodified)
Pg 45, Section 3.3.2. Identifying Alternatives, third paragraph	For public projects, alternative project sites must also be evaluated. For private projects, considerations of off site alternatives is prohibited except under certain circumstances	Change to: For public projects, alternative project sites should also be evaluated. For private projects, consideration of off-site alternatives may be limited except under certain circumstances.
Pg 76, first footnote	ESHB 1724, Section 1	Change to: Findings after RCW 36.70A.470
Pg 101, Section 12. Adopting Agency SEPA Procedures, next to last paragraph	http://www.wa.gov/ecology under SEPA	Change to: http://www.ecy.wa.gov under “Services”
Pg 108, second question	The categorical exemptions are found in Part Nine of the SEPA Rules, and in RCW 43.21C.035, 037, and 0384.	Change to: The categorical exemptions are found in Part Nine of the SEPA Rules, and in the SEPA statute.
Pg 110, second question	The SEPA Rules define a local agency as (WAC 197-11-792)	Change to: (WAC 197-11-762)

Table 2
Changes and Additions to the
1998 SEPA Handbook
December 2003

Some sections of the SEPA Handbook have been changed and/or new information has been added. The updated pages are attached and can be inserted into your copy of the SEPA Handbook as replacements for the current pages. Where the new information required additional pages, the pages are numbered with the previous page number and a sequential letter. For example, a new table listing the statutory exemptions has been added after page 12 of the Handbook and is numbered page 12-A.

Each replacement page is labeled “Updated 2003” at the bottom of the page.

Page Number	Replace with	Change
Inside cover	Revised inside cover	Adds “Updated 2003” and the SEPA Unit mailing address
Pages i and ii, Introduction	Pages i and ii	Adds information on the 2003 updates and corrects the phone numbers and Internet address
Pages 5 and 6	Pages 5, 6, and 6-A	Adds a new section on “Agency Actions”
Pages 11, 12, 13, and 14	Pages 11 thru 14-E	Revises Section 2.3.3. Categorical Exemptions, and adds a new Section 2.3.3.4 Categorical Exemptions for Infill – 2003 Legislation
Pages 19 and 20	Pages 19 and 20	Adds information under Section 2.5.1. The Environmental Checklist, about the checklist guidance available in the <i>SEPA Guide for Project Applicants</i> .
--	Appendix B Supplement	Adds a summary of significant SEPA court cases from 1999 through May 2002
Pg 133 thru 135	New Appendix C	Corrects contact information and identifies information available on the SEPA website

State Environmental Policy Act Handbook

Washington State Department of Ecology
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September 1998

Updated 2003

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www.ecy.wa.gov/programs/sea/sepa/e-review.html

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Special thanks to the people who donated their time to review and provide comment on one or more drafts of this publications.

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Introduction

Welcome to the 2003 Edition of the SEPA Handbook. The focus of this document is to provide guidance on the State Environmental Policy Act (SEPA). We have included information on the history and purpose of SEPA and its relationship with other associated environmental laws. We have provided explanations of the purpose and importance of each step in the SEPA process, and tips on how to best complete them.

The 2003 updates include: (1) corrections, including new phone numbers and Internet addresses; (2) an expanded section on categorical exemptions, including information on the 2003 SEPA amendment that allows cities and counties to create categorical exemptions for residential and mixed use infill; and (3) additional court case summaries.

A list of **Acronyms** immediately follows the **Table of Contents**. **Table 1** provides a brief overview of the SEPA process with references to the corresponding sections of the SEPA Rules. The appendices include a section on **Frequently Asked Questions**, another on SEPA-related **Significant Court Cases**, information on **Additional Resources**, and a selection of **Sample Letters and Forms**. Following the appendices we have included an **Index** with references to discussions in the handbook and the WAC.

This handbook is available via the Internet by accessing Ecology's homepage at <http://www.ecy.wa.gov> and selecting "Services" and "Environmental Review (SEPA)". The SEPA Statute (Chapter 43.21C RCW), the SEPA Rules (Chapter 197-11 WAC), the SEPA Model Ordinance (Chapter 173-806 WAC), the SEPA Register, other guidance documents, and the SEPA forms can also be accessed at this location. (See **Appendix C, Additional Resources** for more information.)

We hope you find the format and content of the SEPA Handbook helpful in your work with SEPA, whether you are a responsible official, reviewing agency, applicant, concerned citizen, or tribal member. If you have additional questions (or comments you would like to make on this publication), please contact our office:

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PO Box 47703
Olympia WA 98504-7703
Phone: (360) 407-6922
Email: sepaunit@ecy.wa.gov
<http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

You may also contact any of our Regional Offices, particularly for questions on SEPA documents currently under review.

Northwest Region, Bellevue: (425) 649-7000
(Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom Counties)

Southwest Region, Lacey: (360) 407-6300
(Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum Counties)

Central Region, Yakima: (509) 575-2490
(Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima Counties)

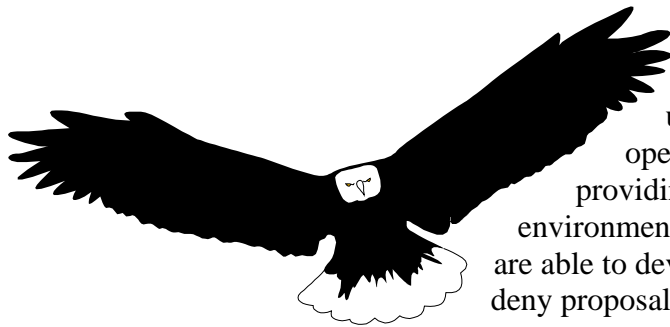
Eastern Region, Spokane: (509) 329-3400
(Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman Counties)

The SEPA Handbook is intended to be used in conjunction with the State Environmental Policy Act (Chapter 43.21C RCW) and the SEPA Rules (Chapter 197-11 WAC). Should a conflict be found at any time between the guidance in this handbook and either the SEPA Rules or the RCW, it should be understood that this handbook is intended as guidance only, and does not have the legal standing of the RCW or the Rule.

2. SEPA Environmental Review

The State Environmental Policy Act (SEPA) is intended to provide information to agencies, applicants, and the public to encourage the development of environmentally sound proposals. The environmental review process involves the identification and evaluation of probable environmental impacts, and the development of mitigation measures that will reduce adverse environmental impacts. This environmental information, along with other considerations, is used by agency decision-makers to decide whether to approve a proposal, approve it with conditions, or deny the proposal. SEPA applies to actions made at all levels of government within Washington State. (See section 1.1 **Purpose and Intent** on page 1 for more information.)

Agency decisions are the hub of SEPA; if there is no agency action, SEPA is not required.



The SEPA Rules provide the basis for implementing SEPA, and establish uniform requirements for all agencies. By opening up the decision-making process and providing an avenue for consideration of environmental consequences, agencies and applicants are able to develop better proposals. Agencies may also deny proposals that are environmentally unsound.

Agency Actions

SEPA environmental review is required for any state or local agency decision that meets the definition of an “action” and is not categorically exempt. Actions are divided into two categories, “project actions” and “nonproject actions”.

Project actions are agency decisions to license, fund, or undertake a specific project. For example, project actions include construction or alternation of:

- Public buildings such as city or county offices, jail facilities, public libraries, and school buildings;
- Public facilities such as water and sewer lines, electrical lines, and roads; and
- Private projects such as subdivisions, shopping centers, other commercial buildings, and industrial facilities.

Nonproject actions are agency decisions on policies, plans, and programs, including adoption or amendment of:

- Rules, ordinances, or regulations that will regulate future projects, such as water quality rules, critical area ordinances, and other state and local regulations;

- Comprehensive plans and zoning codes;
- Capital budgets; and
- Road and highway plans;

When deciding if a project requires SEPA review, remember that “agency action” includes not only a license, but also an agency decision to fund or undertake a proposal. Refer to WAC 197-11-704 for a complete definition of an agency action and WAC 197-11-760 for the definition of license.

If an agency action is not required for a proposal, SEPA environmental review is not required.

2.1. Summary of the SEPA Process

The environmental review process involves a number of steps that are briefly described below. Each step is described in more detail in this handbook.

1. **Provide a preapplication conference (optional).** Although not included in the SEPA Rules, we recommend that agencies offer a process for the applicant to discuss a proposal with staff prior to submitting a permit application or environmental checklist. The applicant and agency can discuss existing regulations that would affect the proposal, the steps and possible timeline for project review, and other information that may help the applicant submit a complete application.
2. **Determine whether SEPA is required.** Determine whether environmental review is required for the proposal by (1) defining the entire proposal, (2) identifying any agency actions (licenses, permits, etc.), and (3) deciding if the proposal fits one of the categorical exemptions. If the project does not involve an agency action, or there is an action but the project is exempt, environmental review is not required.
3. **Determine lead agency.** If environmental review is required, the "lead agency" is identified. This is the agency responsible for the environmental analysis and procedural steps under SEPA.
4. **Evaluate the proposal.** The lead agency must review the environmental checklist and other information available on the proposal and evaluate the proposal's likely environmental impacts. The lead agency and applicant may work together to reduce the probable impacts by either revising the proposal or identifying mitigation measures that will be included as permit conditions.

5. **Assess significance and issue a threshold determination.** After evaluating the proposal and identifying mitigation measures, the lead agency must determine whether a proposal would still have any likely significant adverse environmental impacts. The lead agency issues either a determination of nonsignificance (DNS), which may include mitigation conditions, or if the proposal is determined to have a likely significant adverse environmental impact, a determination of significance/scoping notice (DS/Scoping) is issued and the environmental impact statement (EIS) process is begun. The EIS will analyze alternatives and possible mitigation measures to reduce the environmental impacts of the proposal.
6. **Use SEPA in decision-making.** The agency decision-maker must consider the environmental information, along with technical and economic information, when deciding whether to approve a proposal. Decision-makers may use SEPA substantive authority to condition or deny a proposal based on information in the SEPA document and the agency's adopted SEPA policies. (RCW 43.21C.030(b) and 43.21C.060)

A large proposal involving actions in vastly different locations, such as material being mined at one site, then transported to and processed at another, is another example of defining the entire proposal. Appropriate environmental review would look at the impacts of all the related activities.

It is important to remember that actions are related if they are dependent on each other, so that one will not happen without the other. Related actions may also be spread over time, such as the construction, operation, and closure phases of a proposal.

Related actions may have a single proponent or several. A golf course might be proposed by a private party. However, the city installing a water reuse system needed to serve the site would be a related action. Though the golf course and the water reuse system have separate proponents, since neither would/could proceed without the other, they should be considered together as one proposal under SEPA.

2.3.1.1. Phased Review

The SEPA Rules allow a proposal to be phased so that SEPA compliance can be done for each phase. Phased review allows agencies and the public to focus on issues that are ready for decision and excludes from consideration issues already decided or not yet ready. (WAC 197-11-060(5)(b))

The sequence of phased review of a project must be from a broad scope to a narrow scope. For example, the review of a multi-phase planned unit development would consist of a general review of the entire proposal and detailed review of those phases ready for construction. Additional review would occur prior to each future phase when adequate information was available to evaluate the environmental impacts.

If the proposal consists of a series of actions that are individually exempt, but together may have a significant impact, then the proposal is not exempt.

Phased review is not appropriate when it would merely divide a project to avoid consideration of cumulative impacts or alternatives. For example, if an industrial facility is proposed, it is not appropriate to limit the review to the impacts of the grade and fill permit without considering construction and operation of the industrial facility.

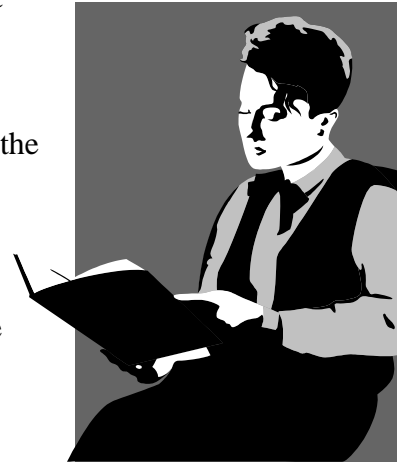
The “broad to narrow” restriction of phased environmental review does not apply to planning proposals done under the Growth Management Act. For example, the environmental review for the adoption of an interim critical area ordinance (narrow focus) may occur before the review and adoption of the comprehensive plan (broad focus). This is allowed under the 1995 amendments to the SEPA Rules in WAC 197-11-228.

Whenever phased review is used, the SEPA document must clearly state that the proposal is being phased. Future environmental documents should identify the previous documents and should focus on those issues not adequately addressed in the previous documents.

2.3.2. Identify Permits

In defining the proposal, it is necessary to determine what permits or approvals will be needed from state, local, and federal agencies. Some resources that can help are the Office of Regulatory Assistance (Office), the Permit Handbook, and the Office's webpage, accessible through the Department of Ecology's homepage (<http://www.ecy.wa.gov>).

The Office can be reached at (360) 407-7037 or 1-800-917-0043, or emailed at ecypac@ecy.wa.gov. The Office is located at the Department of Ecology's headquarters building at 300 Desmond Drive, Lacey.



The Office's website includes an Online Permit Assistance System to help you determine which state and federal environmental permits may be needed based on information you provide about a proposal. The Permit Handbook is also available on the website or by contacting the Office.

When deciding which agency permits or approvals are needed, it may be necessary to consult with other agencies to determine if they have permits or approvals to issue for a specific project. This will help to ensure that all agency actions are identified before determining whether a proposal is categorically exempt.

2.3.3. Categorical Exemptions

Some types of projects and some agency actions have been exempted from the requirements of SEPA by the Legislature. These "statutory exemptions" are contained in SEPA, Chapter 43.21C RCW. Examples of the statutory exemptions include Class I, II, and III forest practice applications, air operating permits, and some water right applications.

The table below summarizes all of the statutory exemptions contained in the SEPA statute on November 1, 2003. Please check the statute for any exemptions adopted after this date.

Statutory Exemptions As of November 1, 2003

Please remember that this is a summary and the entire exemption must be reviewed before determining if a proposal is exempt from SEPA review.

Statutory Exemption	RCW
Acquisition of forest lands in stream channel mitigation zones	43.21C.260
Acquisition of conservation easements pertaining to forest lands in riparian zones	43.21C.260
Air operating permits	43.21C.0381
Certain actions under a state of emergency declared by the Governor (also see the emergency exemption in WAC 197-11-880)	43.21C.210
City or town incorporation	43.21C.220
City or town annexation of territory	43.21C.225
City or town consolidation or annexation of all of a city/town by another city/town	43.21C.225
City or town disincorporation	43.21C.227
Fish enhancement projects being reviewed under RCW 77.55.290	43.21C.0382
Forest Practices Board emergency rules	43.21C.250
Forest practices Class I, II, and III	43.21C.037
Forest road maintenance and abandonment plans	43.21C.260
House Finance Commission plans	43.21C.230
Personal wireless services facilities (also see WAC 197-11-800(25))	43.21C.0384
School closures	43.21C.038
Secure transition facilities to house sexually violent predators	43.21C.270
Timber harvest schedules involving east-side clear cuts	43.21C.260
Unfinished nuclear power projects	43.21C.400
Waste discharge permits for existing discharges	43.21C.0383
Water appropriations of 50 cu ft per second or less for irrigation	43.21C.035
Watershed restoration projects implementing a watershed restoration plan that has been reviewed under SEPA	43.21C.0382

In addition to the statutory exemptions, the Legislature directed Ecology to identify in the SEPA Rules minor activities that would not require SEPA review. These “rule exemptions” are types of projects or agency actions that are not subject to SEPA review because the size or type of the activity is unlikely to cause a significant adverse environmental impact. (Refer to Part Nine of the SEPA Rules.)

Examples of categorically exempt construction activities include construction of four dwelling units or less, commercial buildings with 4,000 square feet or less of gross floor area and no more than 20 parking spaces, and water and sewer lines eight inches or less in diameter. Examples of specific license exemptions include granting of land use variances based on special circumstances, water quality certifications, licenses for open burning, and some hydraulic project approvals.

The Legislature also directed Ecology to identify circumstances when the categorical exemptions would not apply. To meet this requirement, some categorical exemptions include “exceptions”. For example, the construction of a 4,000 square foot commercial building with 10 parking spaces is exempt from SEPA review *except* when the project is on lands covered by water or when the proposal requires a rezone, a license for air emissions, or a license to discharge to water.

Other restrictions are contained in WAC 197-11-305. A proposal that would normally be exempt from SEPA review under Part Nine of the SEPA Rules is not exempt if any of the following apply.

- The proposal is a segment of a proposal that includes a series of related actions, some of which are exempt and some of which are not. For example, the construction of a single family home is usually exempt from SEPA review. However, the single family exemption does not apply when a Class IV forest practice application is required. Since the SEPA statute requires Class IV applications to be evaluated under SEPA, the entire proposal requires SEPA review.
- The proposal includes a series of exempt actions and the lead agency’s responsible official determines that together the actions may have a probable significant adverse environmental impact.
- The city or county where the proposal is located has eliminated the categorical exemption for proposals located within a critical area (see section 2.3.3.2. **Categorical Exemptions in Critical Areas**).

To determine if a proposal is exempt from SEPA, review the rule exemptions in Part Nine of the SEPA Rules and the statutory exemptions in SEPA. If the proposal meets the criteria for a categorical exemption in either the SEPA Rules or the SEPA statute, no further SEPA review or documentation is required. Remember to watch for “exceptions” and consider the restrictions in WAC 197-11-305.

2.3.3.1. Categorical Exemptions--Flexible Thresholds



Most categorical exemptions use size criteria to determine if a proposal is exempt. The SEPA Rules allow cities and counties to raise the exemption limit for minor new construction to better accommodate the needs in their jurisdiction. The exemptions may be raised up to the maximum specified in the SEPA Rules, WAC 197-11-800(1)(c). For example, cities and counties may choose to exempt residential developments at any level between 4 and 20 dwelling units. The exemption

for commercial buildings can range between 4,000 to 12,000 square feet. These "flexible thresholds" must be designated through ordinance or resolution by the city or county. If this has not been done, the minimum level stands. (Refer to section 2.3.3.4. **Categorical Exemptions for Infill** for information on creating exemptions for infill development.)

If a proposal lies within two jurisdictions, the lower level threshold controls the total proposal—no matter which agency is lead on the proposal. For example, the major portion of a proposed 16-unit apartment lies within the city-limits of Bigcity, which has raised the residential threshold to 20 units. A small portion of the development (for instance, the recreational building) lies within the city-limits of Quiettown, which has not raised the residential threshold above the 4-unit minimum. Although Bigcity is lead agency for the proposal and all 16 units will be constructed within Bigcity jurisdiction, Quiettown's lower 4-unit threshold must be applied to the entire proposal and the project would not be exempt.

The exemptions defined under "Minor new construction—Flexible thresholds" do not apply when:

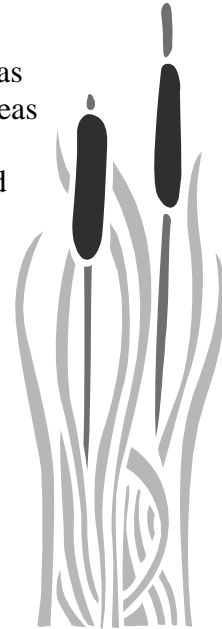
- A rezone is involved;
- A license is needed for air emissions or a discharge to water; or
- The proposal involves work wholly or partly on lands covered by water.

The exemption level set by the county or city will also apply when an agency other than the county or city is lead agency. A state agency or special district may need to consult with the county or city to identify the adopted exemption level for a particular area.

It is also important to remember that the exemptions for "minor new construction—flexible thresholds" do not apply if any portion of the proposal involves work on lands covered by water, if a license is needed for a discharge to air or water, or if a rezone is required. (WAC 197-11-800(1)(a) and (2))

2.3.3.2. Categorical Exemptions in Critical Areas

Cities and counties are required to designate critical areas under the Growth Management Act (GMA). Critical areas are wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. To ensure adequate environmental review of development within these areas, cities and counties may also designate in their SEPA procedures categorical exemptions that do not apply within each critical area. (Refer to WAC 197-11-908 for the list of exemptions that can be eliminated.)



If a project is not categorically exempt because it is located within a critical area, SEPA environmental review is limited to:

- Documenting whether the proposal is consistent with the requirements of the critical areas ordinance;
- Evaluating any significant adverse environmental impacts not adequately addressed by the GMA planning documents and development regulations; and
- Preparing a threshold determination, and an EIS if necessary. (WAC 197-11-908)

Other agencies should consult with the city or county that has jurisdiction over the project site to determine which categorical exemptions do or do not apply to a proposal.

2.3.3.3. Emergency Exemptions

An emergency exemption can be granted by a lead agency when 1) an action is needed to avoid an imminent threat to public health or safety, public or private property, or to prevent serious environmental degradation; and 2) there is not adequate time to complete SEPA procedures. Poor planning by the proponent should not constitute an emergency.



2.3.3.4 Categorical Exemptions for Infill – 2003 Legislation

Cities and counties planning under the Growth Management Act (GMA) must designate urban growth areas, develop comprehensive plans, and adopt implementing regulations to accommodate population growth expected to occur over the next 20 years. As part of this planning effort, GMA cities and counties identify the density of residential development and intensity of mixed use, commercial, and other types of development that will be needed to accommodate the projected population growth.

In 2003, a new section was added to SEPA to encourage infill development at the densities and intensities designated by GMA cities and counties in their comprehensive plans. This new section allows GMA counties and cities to establish categorical exemptions for "...new residential or mixed-use development proposed to fill in an urban growth area designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan." (RCW 43.21C.229)

This legislation is intended to streamline the permit process for infill development in urban growth areas where a city or county is having difficulty meeting planned densities and intensities. Streamlining the permit process will encourage higher density and intensity of development where growth should occur.

Requirements for Adopting Infill Exemptions

Several criteria must be met for a GMA city or county to adopt a categorical exemption for infill:

- The exemption must be limited to new residential or mixed use development within a designated urban growth area;
- The existing density and intensity of use in the urban growth area must be lower than called for in the goals and policies of the applicable city or county comprehensive plan;
- An EIS must have been completed for the adoption of the comprehensive plan; and
- The proposed development must not exceed the density or intensity of use called for in the goals and policies of the applicable city or county comprehensive plan.

Any infill categorical exemption adopted by a GMA city and county is subject to the same limitations as the categorical exemptions adopted by Ecology in the SEPA Rules. Specifically, WAC 197-11-305 states that a proposal is not exempt if:

- The proposal is a segment of a proposal that requires both exempt and non-exempt actions (see section 2.3.3. **Categorical Exemptions** for an example);
- The responsible official determines that the proposal includes a series of exempt actions that together may have a probable significant adverse environmental impact; or
- The city or county has eliminated a categorical exemption for proposals located within a critical area (see section 2.3.3.2. **Categorical Exemptions in Critical Areas**).

In addition, many of the categorical exemptions adopted by Ecology do not apply when the proposal is on “lands covered by water”. The exemptions for minor new construction in WAC 197-11-800(1) also do not apply if a rezone is required or the project requires a license governing emissions to the air or discharges to water. When establishing a new exemption, the GMA city or county should consider whether one or more of these limitations should be included in the exemption.

GMA cities and counties considering adoption of a new categorical exemption should consider whether the exemption would apply to a project proposed within a critical area. It is recommend that the new exemption not apply in critical areas unless the city or county has updated its critical areas policies and regulations to include best available science under RCW 36.70A.172. This will ensure that the functions and values of critical areas are protected within the urban growth area.

Any categorical exemption adopted under this legislation should be adopted as part of the GMA city or county’s SEPA procedures. (Refer to WAC 197-11-904 and 906) A copy of any new categorical exemptions should be sent to the Department of Ecology, SEPA Unit, PO Box 47703, Olympia, WA 98504-7703.

Process for adopting infill categorical exemptions

The following steps are an example of the process that might be used by a GMA city or county to establish a categorical exemption for infill development.

1. Identify the density and intensity goals specified in the adopted comprehensive plan for residential and mixed use development. If the density/intensity goals have been clearly defined, continue to step 2. If the density/intensity goals are not clearly defined, it may be necessary to update the comprehensive plan before adopting a new categorical exemption.

2. Evaluate recent residential and/or mixed use projects to identify a specific area(s) where the density/intensity goals in the comprehensive plan are not being met. This review should include consideration of restrictions in other regulations that may prevent the density/intensity from occurring. For example, development in a critical area may be limited due to a wetland buffer zone requirement in the critical area ordinance.
3. If review of the recent development indicates the density or intensity goals are not being met, identify the development level needed to meet the goals within the selected area.
4. Evaluate the EIS prepared for the comprehensive plan and determine if the density and intensity goals have been adequately analyzed. Is the analysis up-to-date and does it adequately evaluate the likely environmental impacts of proposed infill development?

A new categorical exemption to encourage infill cannot be adopted unless an EIS has been prepared for the comprehensive plan.

If the EIS analysis is not adequate, a supplemental EIS may need to be prepared before adopting an infill exemption. This supplemental EIS should be prepared in conjunction with the adoption or amendment of a subarea plan or an update of the comprehensive plan.

5. Draft a proposed categorical exemption. The exemption should clearly indicate:
 - The level of residential or mixed use development that will be exempt,
 - The area where the exemption will apply, and
 - How the exemption will be applied to a proposed project.

Examples of infill exemptions might be:

- a. Within the Valley Subarea, proposals for construction of up to 50 residential units will be exempt except upon lands covered by water or within a designated critical area. This exemption will be applied on a case by case basis to ensure the proposal is within the density limits established in the comprehensive plan.
 - b. Any residential or residential mixed use development will be categorically exempt if the proposal does not exceed 40% of the density or intensity allowed for the area bounded by xxxx.
6. Complete SEPA environmental review for the proposed categorical exemption. If the EIS adequately analyzes the likely impacts of the proposed categorical exemption, an adoption notice with an addendum may be appropriate.

7. Invite the public to comment on the proposed exemption. Public participation in the development of a new categorical exemption is important. Since a threshold determination is not required when a permit application is received for an exempt proposal, there may not be an opportunity for public review or administrative appeal at the project review stage. To build support for an abbreviated permit process, public awareness is needed when the categorical exemption is developed.
8. Amend the agency's SEPA procedures ordinance to include the new categorical exemption. Send a copy of the new exemption(s) to the Department of Ecology.

Review of Proposals

When an application for residential or mixed use development is submitted, the GMA county/city must:

1. Compare the proposal to the adopted categorical exemption.
 - Is the proposed density/intensity within the limit established in the exemption?
 - Do any "exceptions" in the categorical exemption apply?
 - Is the proposal within a critical area where the exemption does not apply?
 - Do the criteria in WAC 197-11-305 apply?
2. Ensure the proposed density or intensity of the development does not exceed the density/intensity levels established in the comprehensive plan.

If the proposal exceeds the density or intensity in the comprehensive plan, the proposal cannot be exempted.
--

If the proposal meets the criteria in the categorical exemption and does not exceed the density/intensity levels in the comprehensive plan, the proposal is exempt from SEPA review. Agencies are not required to document that a proposal is categorically exempt from SEPA review. However, a note in the file may be useful for future reference.

Frequently Asked Questions About Infill Exemptions

Q. Is Ecology going to amend the SEPA Rules?

A. Ecology is not planning to amend the SEPA Rules at this time. Instead, guidance on adoption of infill exemptions has been included in the 2003 SEPA Handbook Update.

Q. Can the exemption be higher than the exemption level specified in the SEPA Rules?

A. Yes. RCW 43.21C.229(1) specifically states the categorical exemption adopted by the GMA county/city applies even if it differs from the categorical exemption specified in the SEPA Rules.

Q. Is “mixed use” defined?

A. “Mixed use” is not defined in SEPA. For purposes of developing an infill categorical exemption, the term should be defined as a mix of residential and commercial/retail development. The city or county comprehensive plan should define the type and level of development that will be allowed in the mixed use category.

Q. Can an infill exemption include exemption for grading and filling necessary for the residential or mixed use development?

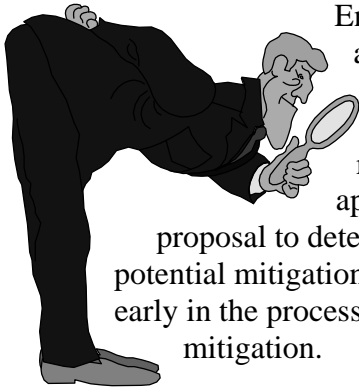
A. When the GMA city/county develops a new infill exemption, they should consider whether or not to exempt the grading and filling needed for the construction of an exempt residential or mixed use development. (See WAC 197-11-800(2)(d) relating to exemption of grading and filling necessary for exempt buildings.)

Q. Are infrastructure improvements needed for an exempt residential or mixed use development also exempt?

A. No. If infrastructure improvements are needed, such as a sewer or water distribution line extension, the improvement will not be exempt from SEPA review unless it meets the exemption level specified in the SEPA Rules (see, for example, WAC 197-11-800(23) Utilities).

assume lead agency status during the optional DNS process (WAC 197-11-948). (See page 83 for additional discussion on the optional DNS process.)

2.5. Evaluate the Proposal



Environmental review normally starts with the completion of an environmental checklist. The checklist provides information to the lead agency about the proposal and its probable environmental impacts. It is the lead agency's responsibility to review the environmental checklist, permit application(s), and any additional information available on a proposal to determine any probable significant adverse impacts and identify potential mitigation. Consultations with other agencies, tribes, and the public early in the process can help identify both the potential impacts and possible mitigation.

Note:

Agencies should be aware of the timing requirements for making a threshold determination:

- Cities and counties planning under GMA should complete project review and issue a notice of decision within 120 days of issuing a notice of completeness. The threshold determination must be issued early enough that the SEPA process (including comment or waiting periods) has been completed prior to issuing the notice of decision. Time needed for an applicant to submit additional information and/or for the preparation of an EIS is not counted in the 120-day time limit. (See section 8. **Local Project Review** on page 76 for additional information.)
- All other state and local agencies must issue a threshold determination (determination of significance or determination of nonsignificance) **within 90 days** of receiving a complete application.

Mitigation is the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts. Monitoring and taking appropriate corrective measures is also mitigation.

2.5.1. The Environmental Checklist

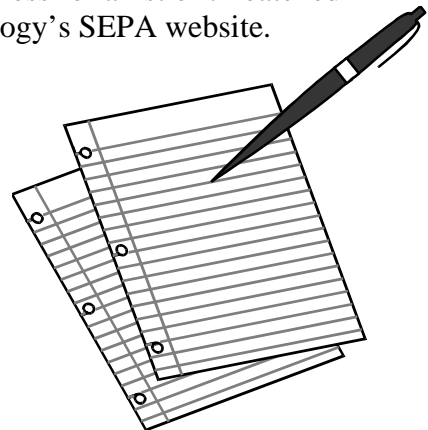
The environmental checklist is a standard form used by all agencies to obtain information about a proposal. It includes questions about the proposal, its location, possible future activities, and questions about potential impacts of the proposal on each element of the environment (such as earth, water, land use, etc.). The environmental checklist is located in the SEPA Rules under WAC 197-11-960.

The lead agency may choose to fill out the checklist or may require the applicant to fill it out. An advantage to the applicant completing the checklist is that it causes them to examine their proposal from an environmental perspective and they may be motivated to make improvements.

Guidance on completing the environmental checklist is available in the SEPA Guide for Project Applicants (Ecology Publication #02-06-018, revised August 2002). This guide provides information on each checklist question. For example, the Air section identifies types of activities that might generate air pollution emissions; the Animals section provides an Internet address for a list of threatened and endangered species. The guide is available on Ecology's SEPA website.

If the applicant completes the checklist, the lead agency must review the answers and make corrections and/or additions, if appropriate. For example the lead agency should verify:

- ☐ Is the project description complete?
- ☐ Have all interdependent pieces of the project been identified? (refer to WAC 197-11-060(3))
- ☐ Have all necessary permits and licenses from local, state, and federal agencies been identified?
- ☐ Is the location adequately identified?
- ☐ Are the descriptions of the environment complete and accurate?



Review and written revisions to the checklist by the lead agency are particularly important because the checklist:

- Is used to solicit feedback from other agencies, tribes, and the public;
- Provides agencies with environmental information needed to make decisions on the proposal; and
- Is part of the environmental record for a proposal.

If the applicant and lead agency agree that an environmental impact statement (EIS) is required, the checklist does not need to be completed.
[WAC 197-11-315(1)(b)]

The checklist was designed to be as generic as possible to ensure that it was applicable to every kind of proposal. The items in the checklist are not weighted. The mention of one or more adverse impacts does not necessarily mean they are significant (WAC 197-11-315(5)). In most cases, if the questions are answered accurately and completely, the impacts of a proposal can be ascertained. If necessary, the lead agency may request additional information from the applicant after conducting the initial review of the checklist. (WAC 197-11-100, 315, 335)

Appendix B Supplement

Significant SEPA Appellate Court Decisions 1999 thru May 2002

The following is a summary of significant SEPA appellate court decisions prepared by the Washington State Attorney General's Office for the period 1999 through May 2002. Please note that all issues regarding SEPA within a case may not be included within the following descriptions. Also, subsequent amendments to SEPA and the SEPA Rules may affect the holdings of any given case.

Exemptions

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000).

WAC 197-11-305 can require SEPA review of a Class III forest practice which is otherwise exempt, if such forest practice is a segment of a proposal which as a whole has a probable significant adverse environmental impact.

Threshold Determinations

Boehm v. City of Vancouver, 2002 WL 960272 (May 10, 2002).

The Boehms argued that the threshold determination should be remanded because the City didn't consider the site specific impacts of Fred Meyer's proposed gas station. The court held that SEPA review need not address cumulative impacts when speculative; when a party can point to no specific impact, those impacts are speculative.

Moss v. Bellingham, 109 Wash.App. 6 (2001).

Large-scale subdivision development did not per se have significant environmental impacts requiring an environmental impact statement (EIS), regardless of attempts to mitigate the impacts prior to permitting. In reviewing the environmental impacts of a project and making a threshold determination, a Growth Management Act (GMA) county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under RCW 36.70A and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project.

Donwood, Inc. v. Spokane County, 90 Wash.App. 389 (1998).

Counties have the authority under SEPA to condition or deny a land use action based on adverse environmental impacts even where the proposal complies with local zoning and building codes. The comments noted on the environmental checklist indicated that the reviewing official was unable to determine various impacts from the proposed development without a specific site plan. Accordingly, the County had the authority,

limited by legitimate governmental interest, to mitigate the impact of the project's development.

Alpine Lakes Protection Society v. Washington State Department of Natural Resources, 102 Wash.App. 1 (2002).

Forest Practices Appeals Board was required to consider impact of unproposed but probable future forest practices in determining the necessity of an EIS under SEPA for a watershed analysis prepared by a timber company. Although the watershed analysis made no mention of any future forest practices, it was unlikely that the timber company would go to the expense of performing it without making a future application for forest practices in the watershed. Even proposals intended to protect or improve the environment may require an EIS under SEPA. For purposes of determining the necessity of preparing an EIS, the absence of specific development plans should not be conclusive of whether an adverse environmental impact is likely.

Environmental Impact Statement

Association of Rural Residents v. Kitsap County, 141 Wn.2d 185 (2000)

Neighboring landowners sought review after county commissioners approved residential development proposed for an area outside the interim urban growth area designated by Kitsap County under GMA. The Supreme Court held that clearly erroneous standard of review, rather than deference to hearing officer's recommendation, applied to county commissioners' decision not to require an EIS for developer's preliminary plan and planned unit development. Hearing officer who concluded EIS was warranted was not the final decision-maker and only made recommendation to county commissioners, who concluded that a mitigated determination of nonsignificance was sufficient.

Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Bd., 100 Wash.App. 341 (2000).

County's threshold determination of nonsignificance did not preclude the Shoreline Hearings Board's independent review of association of property owners permit application for a shoreline substantial development permit to build a 345 foot dock over partly public tidal mudflats.

King County v. Central Puget Sound Growth Management Hearings Bd., 138 Wn.2d 161 (1999).

An EIS for an urban planned development was not fatally flawed based on its discussion of an alternative not authorized by any current zoning law. An alternative may be taken into account for comparative purposes in an EIS, even if the alternative's legal status is contested or uncertain. An alternative need only to be reasonable, and the EIS indicated that the alternative in question posed no greater environmental costs than the proposed project.

City of Des Moines v. Puget Sound Regional Council, 98 Wash.App. 23 (1999). Cities surrounding the airport brought action against Port of Seattle, Puget Sound Regional Council, and City of Sea-Tac, challenging the approval and implementation of a project to construct a third runway at the airport. Court of Appeals held that: (1) Earlier federal court litigation determining that the supplemental EIS satisfied the Federal Airport and Airway Improvement Act did not collaterally stop the cities from challenging the EIS under the more detailed procedural requirements of SEPA; (2) Evidence supported finding in the EIS that airport expansion would not cause an increase in airport's passenger use. Expert testimony, including expert's use of methodology used at most of the country's major airports for estimating future aviation demand, supported the finding. Further, the Port of Seattle and the FAA are agencies with expertise in forecasting aviation demand and should receive deference in choosing the appropriate methodology for forecasting aviation activity for purposes of evaluating an EIS under SEPA; and (3) Inclusion in an EIS prepared in 1996 for proposed third runway of impacts beyond the year 2010 would have been too speculative, where volatility in airfares, forecasts, fleet mix, and other areas after 1994 made it difficult to predict impacts beyond 2010 with substantial accuracy.

Using Existing Environmental Documents

Wells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001). City's unsigned interim agreement that it would temporarily reduce the amount of diversion from a river to a lake if certain levels of stream flow did not occur was not "new information" and therefore, did not require the county water district to provide a supplemental environmental impact statement (SEIS). No scientific information supported the hypothesis that the agreement, if implemented, would increase pollution in the lake.

Appeals

Wells v. Whatcom County Water District No. 10, 105 Wash.App. 143 (2001). Failure to comply with the twenty-one day limit for bringing a challenge alleging noncompliance with SEPA barred the argument that allegedly new information required further environmental review and a SEIS.

Attorneys Fees

Plum Creek Timber Co., L.P. v. Washington State Forest Practices Appeals Board, 99 Wash.App. 579 (2000).

Because State Equal Access to Justice Act (EAJA) is patterned after the federal act, federal standard for determining whether action of administrative agency was substantially justified as will bar award of attorney fees to prevailing party in judicial review of agency action is applied. Under this standard, "substantially justified" means justified in substance or in the main. In other words, justified to a degree that could satisfy a reasonable person. Determination of whether action was substantially justified to bar award of attorney fees under the EAJA is reviewed for an abuse of discretion.

Apline lakes Protection Society v. Washington State Dept. of Natural Resources, 102 Wash.App 1 (2000).

Attorneys fees incurred at the administrative level are ordinarily not available under the state EAJA. Under the EAJA, fees are available to a qualified party that prevails in a judicial review of an administrative action. The statute is silent as to fees incurred at the administrative level. The clear implication is that the Legislature did not intend to make fees incurred at the administrative level available under the act.

Standing

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000)

Shoreline property owners pleaded a sufficient injury in fact to have standing under SEPA to challenge the operation of a passenger ferry whose large wakes allegedly caused damage to the shoreline environment. Their SEPA claim was based on the State's alleged failure to consider the environmental effects of the ferry, not its economic effects, and they alleged damage to both private and public shorelines.

Injunctive Relief

Kucera v. State Dept of Transportation, 140 Wn.2d. 200 (2000).

The Superior Court entered a preliminary injunction limiting the speed of a passenger ferry along a portion of its run pending compliance with SEPA. The Supreme Court held that (1) Shoreline property owners had an adequate remedy at law in the form of monetary damages for erosion allegedly caused by large wakes from the ferry and thus were not entitled to preliminary injunctive relief; (2) Trial court's failure to make any finding as to whether deployment or operation of the ferry caused harm to shoreline property when determining whether to issue preliminary injunctive relief under SEPA was an abuse of discretion. Absent such a finding, shoreline property owners could not satisfy their burden of establishing actual and substantial harm; and (3) Even assuming that deployment or operation of the ferry was causing actual and substantial injury to the environment, issuance of a preliminary injunction pursuant to SEPA without balancing the relative interests of the parties and the public was an abuse of discretion. SEPA does not require that those evaluating a proposed action consider environmental factors alone. Rather, the essential factors balanced frequently are the substantiality and likelihood of environmental cost and economic cost.

Appendix C

Additional Resources

SEPA Website

Additional information about SEPA is available on the Internet at <http://www.ecy.wa.gov> under the heading of “Services” and the subheading of “Environmental Review (SEPA)”. This information includes:

- Regulations
 - SEPA, Chapter 43.21C RCW
 - SEPA Rules, Chapter 197-11 WAC
 - Model Ordinance, Chapter 173-806 WAC
 - Information on proposed SEPA Rule amendments (if any)
- Guidance
 - SEPA Handbook
 - SEPA Guide for Project Applicants (including a guide for completing the SEPA environmental checklist)
 - Citizen’s Guide to SEPA Review and Commenting
- SEPA Register (see below)
- Upcoming SEPA Training offered by Ecology
- Frequently asked questions about SEPA
- SEPA forms in a variety of formats
- SEPA contact list for state agencies, counties, larger cities, and air authorities
- A link to the Council on Environmental Quality for NEPA information

SEPA Register

One important source of information for both agencies and the public is the SEPA Register. The SEPA Register contains a summary of each of the environmental documents sent to the Department of Ecology. Since all agencies within the state are required to send environmental documents to Ecology, the SEPA Register provides a single point for identifying proposals currently under review anywhere in the state. Someone interested in reviewing and possibly commenting on a particular proposal can call the lead agency and request a copy of the specific document.

The SEPA Rules require state and local agencies to send the following environmental documents to the Department of Ecology (WAC 197-11-508):

- DNSs issued with a comment period (under WAC 197-11-340(2));

- Notices of application when the optional DNS process is being used, and the subsequent DNS when issued (under WAC 197-11-355);
- DS/scoping notices (under WAC 197-11-408);
- Draft EISs (under WAC 197-11-455);
- Final EISs (under WAC 197-11-460);
- Supplemental EISs (under WAC 197-11-620);
- Addenda for a draft EIS, or an addenda to a final EIS if prior to an agency decision on the proposal (under WAC 197-11-625);
- Adoption notices (under WAC 197-11-630); and
- Notices of action (under RCW 43.21C.080).

Although not required by the SEPA Rules, agencies are also encouraged to send DNSs with no comment period and other addenda for listing on the SEPA Register. Any federal documents issued under the National Environmental Policy (NEPA) that are sent to Ecology are also listed on the SEPA Register.

The SEPA Register is updated daily and posted on Ecology's Internet site at <http://www.ecy.wa.gov> under the heading of "Services" and "Environmental Review (SEPA)". Documents are listed on the SEPA Register for two weeks, or until the end of the comment period if it is longer than two weeks. The listings can be sorted and viewed in a number of different ways, including by:

- County (or multiple counties)
- Lead agency (or multiple lead agencies)
- Document type
- Documents received during the last business day or from a specific date
- Entire register (documents received during the previous two weeks)

The SEPA Register includes an "additional information" section that provides a description of each field in the Register. There is also a link to an e-mail site for those who have questions related to SEPA (sepaunit@ecy.wa.gov).

Office of Regulatory Assistance

The Office of Regulatory Assistance (ORA) can:

- Answer questions about environmental permits and requirements;
- Help you get started with the permitting process; and
- Help with special projects.

ORA also provides a formal service for larger projects called the Coordinated Permit Process. This process provides a central point for coordination of the numerous permits and approvals required for a specific project. There is usually a fee associated with this service. Anyone interested in more information should contact ORA at (360) 407-7037 or 1-800-917-0043 (e-mail ecypac@ecy.wa.gov).

Additional information about the Office of Regulatory Assistance is available on the Internet at <http://www.ecy.wa.gov/programs/sea/pac/index.html>. This includes an on-line permit assistance system and links to other sources of information, including:

- Joint Aquatic Resources Permit Application (JARPA)
- Stormwater General Permits
- Wetland Regulation Guidebook
- Water Right Applications Information
- Washington's Air Quality Business Assistance Program
- Department of Licensing's Business Licenses Pages
- Washington Administrative Codes (WACs)
- Revised Code of Washington (RCWs)

Office of Community Trade and Economic Development

The Local Government Division of the Office of Community Trade and Economic Development (CTED) provides information and assistance on the Growth Management Act (GMA) and the Local Project Review Act. They have a number of documents available to assist counties and cities in complying with the GMA. These documents are listed on CTED's homepage on the Internet at <http://www.cted.wa.gov>. The Local Government Division can be reached at (360) 725-3000.

Department of Natural Resources

The Department of Natural Resources has a publication called "SEPA Checklist Resource Guide". This Guide provides supplemental information to help applicants complete the environmental checklist. Although the primary purpose is to help applicants with proposals that may require approval from DNR, others may also find the information useful. This Guide is available from DNR's SEPA Center at (360) 902-1634.